STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MILLENNIUM 2000 INC.	:	
Application for Designation as a Wireless Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.	:	**Docket No. 12-0375** **On Rehearing**

REPLY BRIEF ON REHEARING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

*****PUBLIC VERSION*****

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Contents

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The Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys and pursuant to Section 200.800 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.800, respectfully submits its Reply Brief on Rehearing in the above-noted proceeding.

I. INTRODUCTION

On June 5, 2012, Millennium 2000 Inc. ("Millennium") filed its application for designation as a Wireless Eligible Telecommunications Carrier ("ETC") under Section 214(e)(2) of the Telecommunications Act of 1996 ("Application" or "Petition"). 47 USC Section 214(e)(2). Millennium amended its application on April 10, 2013 ("Amended Application"). On June 11, 2013, Staff filed ICC Staff Exhibit 1.0, the Direct Testimony of Dr. James Zolnierek. On September 20, 2013, Millennium submitted the Response Testimony of Donna Harrison and August H. Ankum, PhD. On December 19, 2013 an evidentiary hearing was conducted and a briefing schedule set. After briefing, an Administrative Law Judge ("ALJ") Proposed Order, and exceptions, on January 14, 2015, the Commission issued a final order denying Millennium's application. On February 13, 2015, Millennium submitted its Application for Rehearing, which the Commission granted on February 25, 2015. In lieu of additional testimony and hearings, the parties decided to file briefs on rehearing. Pursuant to an ALJ-approved schedule, Millennium submitted its Initial Brief on Rehearing on April 20, 2015, to which Staff now responds.

II. ARGUMENT

A. Millennium Has Not Met Its Burden of Proof

From the inception of this case, Millennium's Application has been replete with errors and deficient with respect to evidence that designating Millennium as a wireless ETC is in the public interest. As explained below, the information elicited by Staff through its data requests and testimony has, rather than bolster Millennium's case, made it abundantly clear that designating Millennium as a wireless ETC is not in the public interest. During the pendency of this proceeding, the ALJ stated:

> This matter was filed 16 months ago. We've had data requests and information going back and forth for months after months after months and I don't see where the parties could possibly be dissatisfied with the level of information at this point. So it's time to either fish or cut bait.

Tr. 89, lines 5-10. Most assuredly, it is time to "cut bait."

It is clear that Millennium 2000 has the burden of proof in this proceeding. The FCC has stated that:

> In determining whether an ETC has satisfied these criteria [the factors weighed in analyzing the public interest ramifications], the Commission [FCC] places the burden of proof upon the ETC applicant. (Illustration added).
>
> ETC Order, ¶44.

Equally clearly, Millennium has the burden as a matter of state law. It is well settled as a matter of administrative law that the party seeking relief bears the burden of proof. People v. Orth, 124 Ill. 2d 326, 337 (1988). The term "burden of proof" includes the burden of going forward with the evidence and the burden of persuading the trier of fact. People v. Ziltz, 98 Ill. 2d. 38, 43 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. Ambrose v. Thornton Twp. School Trustees, 274 Ill. App. 3d 676, 690 (1st Dist. 1995), *app. den.*, 164 Ill. 2d 557 (1995); Chicago Board of Trade v. Dow Jones & Co., 108 Ill. App. 3d 681, 686 (1st Dist. 1982).

Millennium has not gone forward with this burden. It has not presented evidence sufficient to persuade the trier of fact. It should not be granted the relief it requests.

From the onset of this case, Millennium has had difficulty defining its proposed ETC service area. In its Amended Petition in this proceeding, Millennium represented that its proposed service area would overlap with areas served by rural carriers in Illinois. (Amended Petition, 7.) This information was inconsistent with that provided to Staff by Millennium in data request responses. (Staff Ex. 1.0, 31.) When this issue was raised during a status hearing, the ALJ noted "it's still not been thoroughly defined as to when ... the data request responses will be satisfactory." Tr. 29, lines 3-6. At that point in time, counsel for the Applicant represented that Millennium would file an errata to the Amended Petition. Tr. 29, lines 16 -17. Millennium filed an Errata to its Amended Petition April 29, 2013, which purportedly was intended to clarify that Millennium did not propose to include any rural service areas within its proposed ETC service area. This, however, did not resolve the deficiencies with respect to Millennium's proposed service area.

Millennium's Amended Petition as revised by its Errata defined its proposed ETC service area, alternatively, as: (1) the group of Local Access and Transport Areas ("LATAs") including LATAs 358 (Chicago), 360 (Rockford), 362 (Cairo), 364 (Sterling), 366 (Forrest), 368 (Peoria), 370 (Champaign), 374 (Springfield), and 376 (Quincy); AT&T Illinois non-rural service areas; and the service areas of Sprint and Verizon Wireless. Each of these definitions is different and they are mutually inconsistent. (Staff Ex. 1.0, 29-31.) In response to Staff data requests, Millennium provided additional definitions for its ETC service area based upon exchanges. (Id., at 32.) This information was again, inconsistent with all previously proposed definitions and, once again, included certain rural service areas among those include in Millennium's proposed ETC service area. (Id., at 32-34.) Thus, Millennium's Amended Petition as revised by its Errata does not contain an identifiable ETC service area.

In response to concerns expressed by Staff witness Dr. Zolnierek regarding the definition of Millennium's service area, Millennium witness Ms. Harrison, testifying for Millennium, noted with respect to these inconsistencies, that "Dr. Zolnierek's testimony was submitted prior to completion of discovery." (Millennium Ex. 1.0R, 32.) Thus, Millennium continued to rely upon Staff data requests and Staff testimony to cure defects in Millennium's evidence even after Staff's only opportunity to file testimony in this proceeding was complete. In fact, in this proceeding Millennium points not to evidence supplied by it in its Amended Application, but rather evidence supplied by Staff to define its proposed ETC service area. ((Id., at 33.) The fact that Millennium was unable, without significant, material assistance from Staff, to clearly define its proposed service area is evidence of a failure in Millennium's capability to provide wireless service throughout its service area. (Staff IB, 22.) More specifically, if Millennium does not have the capability to identify its service area, then it cannot meet the most basic of ETC requirements, in particular the requirement to offer Lifeline service throughout its designation ETC service area.

When Millennium filed its Amended Application with the Commission, it asserted it provided prepaid wireless telecommunications services by obtaining the services of Sprint and Verizon Wireless indirectly, through Reunion Wireless, LLC (in turn through Kajeet, Inc.) and through Coast to Coast Cellular, Inc. (Amended Application, 4.) Millennium admits that it did not have an effective contract with Coast to Coast at the time it filed its Amended Petition and, in this respect, its Amended Application was, and remains, inaccurate. (Staff Group Ex. 3.0, Second Supplemental Response JZ 1 04b.)

After admitting it did not have an effective agreement with Coast to Coast, Millennium ultimately relies upon a contract with Reunion Wireless, substantial parts of which were not signed until after Millennium filed its Amended Petition, for evidence of its ability to provide service throughout its service area. (Millennium Group Ex. 3.17.) Further, Millennium's Reunion contract states "Wireless Service Provider acknowledges and agrees that Service may not be available in all the markets that Wireless Service

Provider serves." (Millennium IB, 12.) Millennium provided a letter from a representative of Reunion that Millennium asserts addresses Staff's concern over the Company's ability to provide service throughout its proposed footprint. (Id., 11-12.) Notably, the Reunion representative notes that the contractual statement reflects, among other things, the fact that wireless services are subject to the network design and coverage decisions of Reunion's underlying carrier(s). (Id., 12.) Thus, the letter emphasizes that Millennium may not be able, through the use of Reunion services, to provide service throughout Millennium's footprint if the underlying carriers own networks do not cover the entire territory. As noted by Staff, there is no evidence that these networks do cover the entire proposed Millennium service area. (Staff IB, 24-25.) Thus, as it stands, Millennium's case does not demonstrate that it can provide service throughout its proposed service area. The evidence in this case therefore supports the Commission's determination that it "cannot find that the record supports the conclusion that Applicant has the technical capability to provide service in all portions of the identified service area." (Order, 35.)

The inability and unwillingness of Millennium to meet its commitments to offer its Lifeline service throughout its service area is more than just a theoretical or prospective concern. This is because Millennium has failed to do so with respect to its wireline Lifeline offering. Millennium's wireline ETC service area was established by the Commission to include all of Illinois Bell Telephone Company's and all of Verizon North Inc.'s (now Frontier North Inc.'s) service areas. (Order, Docket No. 08-0454, DATE, 24.) In her testimony, which was submitted after Staff's only opportunity to file testimony in this proceeding, Ms. Harrison explained that Millennium provides its wireline ETC service through resale of Illinois Bell Telephone Company (AT&T Illinois) service. (Millennium Ex. 1.0(R), 31.) This evidence indicated that, approximately five years after Millennium was designated as an ETC, it had no ability whatever to offer service in the Frontier North Inc. portion of its wireline ETC service area. Millennium later explained "[a]t the time of its wireline ETC Application in 2008 Millennium 2000 intended to provide service in the Verizon (now Frontier North) footprint and it marketed its service. Those efforts, however, have not been successful. Thus, Millennium 2000 did not undertake the substantial investment to obtain an interconnection agreement for that service territory." (Millennium RB, 14.) That is, it became clear only during the briefing stage of this proceeding that Millennium had made a business decision to not offer service throughout its wireline ETC area. Millennium knowingly and willingly decided not to comply with the most basic of ETC requirements, in particular the requirement to offer its Lifeline service throughout its ETC service area.

In an attempt to explain away its compliance failure, Millennium asserted, for the first time in its Reply Brief, that it initiated marketing efforts, but was unable to produce any record of a single request for service from a customer residing within the Frontier North service area. Id. While it might have been worthwhile to explore whether Millennium's record retention policies would have resulted in Millennium's actual retention of a record request from any customer residing within the Frontier North service area, Millennium's assertions were made well past the date upon which the ALJ indicated that its was time to cease issuing data requests. It certainly is clear, however, that whatever advertising methods Millennium initiated in the Frontier North service area, they did not comply with the requirements Millennium was subject to pursuant to its wireline ETC designation. In particular, Millennium did not, as it was required to do pursuant to the Commission's Order in Docket No. 08-0454, advertise its services in local circulation newspapers.[1] (Staff IB, 26.) Notably, while the Commission determined that "the Applicant's intent to market its services through print, using the Lifeline brochures, and through live contact and electronic media, is sufficient to satisfy the 'media of general distribution' requirement of §54.201(d)(2)" (See Order, 36), this does not change the fact that Millennium committed in Docket No. 08-0454 to advertise its services in local circulation newspapers and failed to do so. More pointedly, contrary to the any implicit assertion that it was offering services in the Frontier North service area, Millennium directly reported to the Commission during this time period that it did not offer service in the Frontier North service area. (Staff IB, 25.)

The evidence is substantial that Millennium failed to comply with its requirement to offer its wireline Lifeline service throughout its designated wireline ETC service area. This evidence certainly establishes a significant compliance failure. Further inquiry on the part of Staff or the Commission will not change this fact.

In its Application for wireline ETC status, Millennium stated:

> Pursuant to 47 CFR §54.202(a)(1)(i), an ETC applicant must agree to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Millennium 2000 will commit to satisfy this FCC guideline.

(Application in Docket No. 08-0454, ¶ 17.) Millennium further stated "… Millennium 2000 is providing service to its customers through the use of AT&T Illinois and Verizon facilities …" (Application, Docket No. 08-0454, ¶ 17.) As explained above, Millennium was not providing service using Verizon facilities, did not have any ability to do so, and,

[1]

based upon its own internal business decision, affirmatively chose not to do so. It thus bears further inquiry in this proceeding as to whether Millennium's technical capabilities have been similarly inaccurately represented.

In its Amended Petition in this proceeding, Millennium stated "Millennium 2000 *provides* prepaid wireless telecommunications services to consumers nationwide by obtaining service, from its underlying carriers, Verizon Wireless ("Verizon") and Sprint." (Amended Application, 4.). In response to a Staff data request, Millennium acknowledged that the interconnection agreement allowing it access to Verizon's network was no longer in force or effect at that time. (Staff IB, 21-22.) Thus, it was not, as it represented, providing service using Verizon Wireless' network and did not have any lawful authority, or indeed any capability at the time to do so. And, the agreement submitted by Millennium, which was not an agreement with either Sprint or Verizon, did not demonstrate that it has the ability to use its underlying carrier's network in all parts of Millennium's proposed service area. (Staff IB, 24.) Thus, Millennium again misrepresented its capacity to provide service and failed to provide evidence in support of its assertion that it not only could do so, but was doing so. Thus, the Commission was correct to conclude in its Order that the record does not support a conclusion that the Applicant has the technical capability to provide service in all portions of the identified service area. (Order, 35.) Given Millennium's repeated misrepresentations of its capabilities, the Commission should stand on its previous finding that Millennium be denied an ETC designation.

Just as troubling as Millennium's failure to offer service throughout its service area, is the evidence of Millennium's extraordinarily poor customer retention rate.

Millennium's customer retention rate has been below any other ETC's Illinois customer retention rate. (Staff Ex. 1.0, 46.) As reported by Staff, Millennium's annual Lifeline verification report indicates a customer retention rate of 1.4% and its monthly turnover rate has often ***exceeded*** 100%. (Id., at 46-47.) Millennium posits that its low retention rate is a function of the low desirability of its wireline product relative to prepaid wireless services. (Millennium IB on Rehearing, 21.) This theory is disproven, however, by the fact that the customer retention rate reported by Millennium on its most recent annual Lifeline verification report for its Wisconsin *wireless* Lifeline customers is ***0%***. (See http://apps.fcc.gov/ecfs/comment/view?id=60001013001.) Millennium also suggests that its retention rate is lower than other ETCs because it focuses on the low income community. (Millennium IB on Rehearing, 22.) Of course, this argument ignores the fact that Lifeline service can only be offered to the low income community, so that all ETCs share this disadvantage. Thus, Millennium's focus on the low income community is, by definition, no different than any other Lifeline provider's focus. These Millennium explanations fail to consider a more troubling possibility.

As noted by Staff, Millennium's service offerings included a five-day Lifeline plan. (Staff IB, 33.) This plan offering allows Millennium to recover a full month's Lifeline subsidy, while offering customers only five days of actual service. This is evidence that Millennium's own business practices contribute to its extremely low customer retention rate. More troubling, however, is that this product is antithetical to the entire purpose of the Lifeline program, which is to get customers connected to the public switched telephone network, and keep them connected. Millennium's five-day Lifeline offering has exactly the opposite result; it exhausts a customer's entire monthly Lifeline benefit in five days (diverting it to Millennium), and then disconnects the customer. Furthermore, on its face, retaining a full month's Lifeline subsidy while providing only five days of actual service defrauds the program.

Millennium's response to this very serious concern was to state, in part:

> The Staff does not even state whether any Millennium 2000 customer has chosen the plan, much less whether the hypothetical customer was unsatisfied with the plan. The plan referenced by the Staff is only one of four wireline ETC plans offered to customers.

(Millennium RB, 29.)

That the record does not specify how extensively Millennium relied upon this program to defraud the system does not represent any deficiency in the Staff case. Millennium's transgression is clear, and it is not incumbent upon Staff to elicit how extensive this transgression is.

In evaluating Millennium's past ETC performance, based upon Millennium's tariffs, Dr. Zolnierek alleged that Millennium failed to supply customers with the full Lifeline amounts they were entitled to receive from Millennium. (Staff Ex. 1.0, 41.) Ms. Harrison argued that it had passed through the full Lifeline discount, but that its tariffs were inaccurate. (Millennium Ex. 1.0(R), 56.) Failure to accurately tariff its service prices is, once again, indicative of an inability on the part of Millennium to comply with requirements it is subject to as an ETC.

In support of her assertion that Millennium passed through its full Lifeline subsidy, Ms. Harrison provided sample Statements of Service from July through August 2012 when Millennium 2000 provided prepaid service. (Exhibit 12 to Millennium Ex. 1.0(R).) Of the five samples provided by Ms. Harrison, four contain simple math errors. In particular, the first, second, third, and fifth such statements provide subtotals that are

$1.84 more than they should be (each includes a subtotal of $24.34, when the subtotal for a $37.50 service discounted by $15.00 should be $22.50). These statements inflate customer charges to Millennium's benefit.

Staff asked for additional information regarding Millennium's actual billing practices. Millennium provided further sample Statements of Service for January 2013. (Group Cross Exhibit 3.0, Exhibit 3.24. Millennium 2000 Response to JZ 6.21.) Of the two samples provided for January 2013 both include incorrect billing periods (Statement Period 01/11/2013 - 01/10/2013 and Statement Period 01/06/2013 - 01/05/2013).

In attempting to determine what Millennium actually charged customers in order to verify that Millennium passes through the full amount of Lifeline subsidies to its customers, Staff, as noted above, uncovered billing errors in the majority of the billing statements supplied by Millennium. Millennium addresses Staff's request for further billing information that it would inform the Commission on how extensive Millennium's billing inaccuracies are as well as its pass-through claims stating: "Millennium 2000 informed Staff that compliance with its request for thousands of documents would be unreasonably burdensome, given that the sample showed the exact same discount reflected in the thousands of bills and statements of service." (Millennium Application, 42.) The evidence in the record clearly demonstrates that its bills, like its tariffs, were inaccurate. The Commission is correct to challenge the assertion that these bills demonstrate that Millennium has passed through the full Lifeline discount to all of its Lifeline customers.

With respect to its financial ability to provide service, Millennium included no substantial financial information in its Amended Petition. It included no Balance Sheet, Statement of Cash Flows, FCC financial filings or any other similar documents. (Staff IB, 30.) Millennium's election to not file direct testimony in this proceeding in support of its Amended Petition left its assertions of financial fitness entirely bereft of any such substantial financial support. As noted by Ms. Harrison, Millennium did provide certain of this information, after Staff filed its testimony, when requested to provide it by Staff. (Millennium Ex. 1.0, 45.) Millennium reasoned "[t]he Staff states that Millennium 2000 did not file financial documents with its Petition, but there is no ICC rule requirement to do so." (Millennium RB, 23.) This is, of course, correct because the Commission has no ETC designation rules. Millennium is free to contest production of basic financial documentation regarding its fitness, but failing do so leaves it bereft of the basic proof of such fitness.

With respect to its service history, Millennium takes issue with the Commission's Order stating "The first finding, that Millennium 2000 has not provided wireless service, is contrary to the unrebutted testimony of Ms. Harrison." (Millennium IB on Rehearing, 11.) Millennium asserts that "Ms. Harrison has testified that the Company did not begin charging for service until April 2013" and later states "the underlying theme of Staff's argument and the Commission Order's finding – that Ms. Harrison's verified testimony is not to be believed unless Millennium 2000 also submits documents from some third party supporting her testimony – is repugnant." (Millennium IB on Rehearing, 12.) Millennium's continued inability to provide accurate and responsive information is the basis for Staff's and the Commission's positions that Millennium should not be designated an ETC.

In addressing Millennium's financial qualifications to be an ETC, Staff looked to Millennium's history of service provision and revenues. The Millennium Compliance Plan attached to Millennium's Amended Petition and dated December 18, 2012 states "Millennium 2000 currently provides wireless services to non-Lifeline customers in Illinois and Wisconsin." (Exhibit 1A to the Petition at 15.) Staff requested confirmation of this information. Millennium confirmed it was erroneous. The record in this proceeding indicates that Millennium's Compliance Plan was incorrect when filed. According to Millennium, "Millennium 2000 wishes to update its response to the data requests JZ 1.01(b),(d),(j), (l) and (k) to clarify that it commenced its wireless service and Lifeline services in the state of Wisconsin as of June 2013." (Staff Group Ex. 3.0, Response to JZ 6 10(a).) Thus, although Ms. Harrison submitted a verified statement to the FCC to the contrary, which it included as evidence with its Amended Petition in this proceeding, Millennium did not provide wireless service in Wisconsin on December 18, 2012. Thus, the Amended Petition submitted by Millennium and verified by Ms. Harrison is incorrect with respect to Millennium's service provisioning history.

Millennium argues, "Ms. Harrison testified under oath that the company has been providing unbilled wireless non-Lifeline service since December, 2012, with a full roll-out of billing for those services in April 2013, and there is nothing in the record disputing that testimony." (Millennium IB ON REHEARING, 12.) Ironically, Ms. Harrison's own testimony disputes Millennium's argument. Ms. Harrison actually stated: "Millennium 2000 provided wireless services in Illinois since December 2011, with its full roll-out of wireless services commencing in April 2013. (Millennium Ex. 1.0(R), 41.) Additionally Millennium's Compliance Plan dated December 18, 2012 which was verified by Ms.

Harrison and included as evidence with Millennium's Amended Petition in this proceeding, states "Millennium 2000 has provided prepaid wireless services in Illinois since 2010." Exhibit 1A to the Petition at 23. Again, the Amended Petition submitted by Millennium and verified by Ms. Harrison is seemingly incorrect with respect to Millennium's service provisioning history. Further, because of contradictory evidence presented by Millennium, its not clear when Millennium began providing unbilled wireless service.

There is no evidence in this proceeding that Millennium has collected any revenue from wireless service provided to non-Lifeline customers in Illinois. Millennium, once again, responds to this deficiency by stating "If the Staff need such documentation, it could have asked for it, and if denied a response, filed a motion to compel." (Millennium IB on Rehearing, 12.) Based on erroneous information filed by Millennium, the Commission has every reason to doubt the veracity of the information supplied by Millennium and its witness. It falls squarely on Millennium to rectify this deficiency and it is not incumbent on Staff to force it to file such information in the face of its refusal to do so.

Millennium argues:

> Millennium 2000 met its burden of proof in its application, testimony and group exhibits placed in the record in lieu of cross examination. The burden then shifted to the Staff if it wished to object to granting the application. … Staff made no attempt to accept that burden until its belated decision to try to file reply testimony, which was correctly rejected by the Administrative Law Judge. Even after that, it could have tried to make its case on cross examination of Millennium 2000's witnesses but chose not to do so.

(Millennium IB on Rehearing, 23.) As shown above, Millennium's Amended Petition in this case has and continues to contain erroneous information, there is extensive evidence that Millennium does not meet requirements for designation and that such designation would not be in the public interest. Staff cannot be simultaneously criticized for making too many requests of Millennium to clarify these matters and for failing to force Millennium to provide more information when it has refused to do so. Millennium's case is thoroughly deficient, and Staff and the Commission, even if it were possible, bear no burden to resuscitate it.

B. Demonstration that the Applicant Will Not Critically Rely on Lifeline Subsidies

Millennium's Application for Rehearing overwhelmingly focuses on a condition Staff identified as potentially appropriate for some ETC applicants. In particular, Dr. Zolnierek suggested that:

> If the Company's record of service is insufficient [e.g., no prior record of service, no history of non-lifeline service, etc.], the Commission should not designate the carrier as an ETC until such time as it demonstrates an ability to serve the Illinois market (without relying substantially on Lifeline subsidies). In this case, the Commission should determine that the Company cannot begin to provide Lifeline service in Illinois until such time as it has established a six month record of providing non-Lifeline in Illinois, has supplemented the record in the proceeding to reflect this period, and has received specific approval from the Commission to commence Lifeline service.

(Staff Ex. 1.0, 20.) Millennium posits:

> The Staff subsequently filed a Reply Brief and a Brief on Exceptions and still never provided legal support for the 20% rule. Thus, the Staff had multiple opportunities to provide legal support for the recommendation of its witness, but failed to do so at each opportunity. The Commission might ask why the Staff did not take any of its opportunities to provide legal support. The answer is the record evidence.

(Millennium Application for Rehearing, 14.) Actually, the answer is: Staff did not recommend that the Commission apply this condition to Millennium upon designation. Staff's position has been and remains that Millennium's Petition should be denied.

As explained above, Millennium has failed to comply with its most basic requirements as a wireline ETC including requirements to offer and advertise its Lifeline service throughout its service area, to offer customers a full month's worth of service in association with their monthly subsidy, to appropriately reflect its Lifeline rates in its tariffs, to provide accurate bills, and to provide adequate customer service. On top of all of these glaring deficiencies, Millennium has repeatedly failed to comply on a timely basis with its Part 757 Lifeline reporting requirements. (Staff Ex. 1.0, 44-45.) This repeated pattern of untimely filings is further indication of either an inability or unwillingness to meet conditions of its wireline ETC designation.

The Staff's position has been and remains clear. Dr. Zolnierek stated in the conclusion to his testimony "I recommend that the Commission not designate Millennium as an ETC." (Staff Ex. 1.0, 48.) Staff stated in the conclusion to its Initial Brief that "Staff respectfully requests that the Commission's order in this proceeding deny Millennium's Petition for ETC status." (Id., at 43.) Again, Staff stated in the conclusion to its Reply Brief that "Staff respectfully requests that the Commission's order in this proceeding deny Millennium's Petition for ETC status." (Staff RB, 29.) Staff's recommendation with regard to this proceeding is unmistakable -- Millennium's Petition should be denied. Staff does not recommend conditional acceptance because Millennium's poor showing in implementing its wireline Lifeline program is evidence that it fails to comply with conditions of its ETC application and sometimes does so willfully and knowingly. ETC designation conditions are only effective to the extent that an ETC complies with them. Millennium's history demonstrates that it does not.

Staff does recommend adoption of the 20% rule for certain carriers that are designated as ETCs. Staff recommended that this requirement be imposed upon providers that have an insufficient service record [e.g., no prior record of service, no history of non-lifeline service, etc.] (Staff Ex. 1.0, 19.) As noted above, when Staff filed its testimony in this proceeding, Millennium had failed to file any Balance Sheet, Statement of Cash Flows, FCC financial filings or any other similar documents and the service history it relied upon in support of its financial and technical ability was subsequently shown by Staff to be inaccurately reported by Millennium. Based on these circumstances, had Millennium's designation otherwise proven to be consistent with ETC designation requirements and the public interest Staff would have advocated for application of this requirement upon designation.

Separate and apart from the post designation 20% condition, Staff did recommend that, for carriers previously designated as ETCs in other states or for other types of service provisioning, that the Commission consider the company's non-Lifeline to Lifeline service record. (Staff Ex. 1.0, 19.) The Commission was correct to consider Millennium's potential dependence on Lifeline revenues. That is precisely what the FCC directed it to do when it recently changed its rules to require the Commission to make a financial and technical fitness assessment of Millennium. The FCC rules require the Commission to asses Millennium's financial and technical fitness when performing ETC designations. (47 C.F.R. § 54.201(h).) The FCC prescribed a framework for the Commission to perform financial and technical capability evaluations under Section 54.201(h) of the FCC rules:

> Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

Lifeline Reform Order, ¶388. This clearly indicates that the Commission is expected to consider the extent to which Millennium is dependent on its USF revenue. Staff was able to elicit Millennium service revenues, through data requests, based upon Millennium's universal service related financial filings with the FCC. These filings revealed a historically heavy, and virtually exclusive, dependence on Lifeline and Link-Up revenues. (Staff IB, 32.) Thus, the evidence in this proceeding showing Millennium to be heavily dependent on USF revenues is evidence the FCC has indicated should be viewed unfavorably when making ETC designation decisions.

Millennium argues that the FCC standard only applies if Millennium's revenues are exclusively from Lifeline subsidies. (Millennium Application for Rehearing, 8.) The Commission should not read the FCC's Order so narrowly. On its face the FCC's Order suggests that state commission should consider the level of dependence of ETCs on their Lifeline revenues. It would be absurd to entirely discount the FCC's Order based upon, for example, a single minute of non-Lifeline revenue. Moreover, even if a *de minimis* level of non-Lifeline revenues does not absolutely disprove a carrier's financial fitness, it does little or nothing to positively prove a carrier's financial fitness.

Millennium states that "by enforcing the 20% rule [the Commission] may be driving away the only non nationwide mass market wireless company whose ETC application it has granted" and "the Commission is literally driving a Chicago based company out of the state." (Millennium Application for Rehearing, 4, 10-11.) This, however, is precisely the point; Millennium makes it starkly clear that, without its ETC designation and Lifeline subsidy revenues associated with it, Millennium will not survive. This absolute dependence on Lifeline subsidy revenues is precisely what the FCC has recommended state commissions guard against. The fact that Millennium, operating under these circumstances, choose to offer a plan that allows it to recover a full month's Lifeline subsidy while offering customers only five days of actual service, indicates that the FCC was correct in expressing concerns that over-dependence on Lifeline subsidy revenue can create incentives for the carrier to abuse or defraud the program. (Staff Ex. 1.0, 17-18.)

In arguing that Staff's recommendations discriminate against existing carriers (see Millennium Application for Rehearing, 10), Millennium overlooks a basic fact. Specifically, the FCC changed its rules to require the Commission to do a financial analysis of new ETC applicants and that rule did not apply with respect to previous applicants. Thus, <u>any</u> financial assessment performed by the Commission, and <u>any</u> condition based upon it, results in differences in the designation process used by the Commission today versus in the past.

Additionally, the Staff proposal is not one-size-fits-all. The Staff recommends a going forward imposition of the 20% requirement only when an applicant's previous service record is insufficient [e.g., no prior record of service, no history of non-lifeline service, etc.] (Staff Ex. 1.0, 19.) Thus, this requirement would not apply to providers that have established a viable service record in Illinois and that have provided evidence that they are not establishing service solely to collect Lifeline subsidies. There is no evidence in this proceeding regarding whether, if the Commission had been required to apply the FCC required financial analysis in the past, that such a condition would have been imposed on existing carriers. There would also have been no need to apply such criteria with respect to any current ETC that was providing a meaningful level of non-Lifeline service in Illinois prior to its designation to provide Lifeline to customers of its service.

In sum, the Commission was correct when it determined that "requiring a demonstration of legitimate and profitable operation, and the demonstration that the Applicant will no critically rely on Lifeline subsidies will provide the Commission with some assurance that the Applicant will be less inclined to risk engaging in waste, fraud, or abuse as a means of remaining solvent." (Order, 38.)

In making its arguments. Millennium, asserts that "Millennium 2000 believes it will easily exceed the required ratio of 20 percent non-Lifeline wireless customers to total wireless customers." (Millennium IB ON REHEARING, 6.) Millennium's belief is based upon its expectation that "a substantial percentage of families using one of its Lifeline phones will wish to obtain additional, non-subsidized, lines." Id. Why Millennium believes that households that require assistance in order to be able to afford basic phone service will pay for additional unsubsidized lines is unexplained and inexplicable. Making a commitment that relies on such a suspect assumption in order for the commitment to be met is unreasonable and likely to result in a failure to comply with such commitment.

C. ETC Activity in Illinois

Millennium argues that:

> Commission Staff's approach to considering wireless ETC applications has already driven low income focused companies such as Millennium 2000 out of Illinois and is leaving the provision of service to national, mass-market, wireless carriers that consider Lifeline service to be a side business.

(Millennium IB ON REHEARING, 4). In support of this argument, Millennium identified thirteen ETC designations requests that have either been voluntarily withdrawn or have been continued generally. (Millennium IB ON REHEARING, 4 and Attachment 1.) Millennium's accusation that these continuances or withdrawn applications are the result of Staff or Commission actions is unsupported and, in several cases, clearly wrong.

Of the thirteen ETC designation requests identified by Millennium, four involve carriers that rely on resale and are not currently eligible to participate in the Lifeline program because they have not had a compliance plan, that the FCC requires of resellers that desire to offer Lifeline services, approved by the FCC. These four are Assist Wireless, LLC, Everycall Communications, Inc. d/b/a All American Home Phone d/b/a Local USA d/b/a All American Wireless, US Connect LLC, and Linkup Telecom, Inc. (See http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions.) One carrier, Q Link Wireless, LLC, requested a stay of its proceeding because its Chief Executive Officer was arrested and charged with murder in the second degree. (See Q Link Wireless, LLC Joint Motion to Stay Proceedings in Docket No. 12-0095, Filed October 24, 2014.) Thus, these continuances are not the result of any Staff or Commission action, but instead are the result of factors outside the Commission's control. Additionally, Millennium does not, because it cannot, provide evidence as to why the other applicants it cites to withdrew their applications. Millennium's assertions that Staff's approach to considering wireless ETC applications is driving low-income based ETCs away from Illinois are unsupported speculation on Millennium's part.

Similarly, Millennium has no support for its assertion that multistate wireless providers that provide wireless Lifeline service in Illinois employ "minimal marketing to the low income market" and fail to "offer services targeted to that market." (Millennium IB ON REHEARING, 5.) Universal Service Administrative Company low income reporting shows many ETCs in Illinois receiving hundreds of thousands of dollars in Lifeline subsidies each month, which is certainly not consistent with a failure by such carriers to market or offer Lifeline services to the low income market. (See http://www.usac.org/li/tools/disbursements/default.aspx.) Millennium's assertions are neither supported nor credible.

While Millennium attempts to shift the focus to other carriers, ultimately, it is Millennium's qualifications that are at issue in this proceeding. Millennium's qualifications, and not those of other pending applicants, are what the Commission should consider.

C. Emergency Functionality

Millennium argues it demonstrated that it met the crucial emergency services requirement and, as support, refers to a letter from the President of Reunion Wireless Services, LLC explaining Millennium's access to emergency services. (Millennium IB

ON REHEARING, 15.) Millennium then asserts that Staff made a decision that Millennium met the emergency services criteria. (Id., 16.) Staff did make such a decision. Staff has recommended the Commission not designate Millennium as a wireless ETC. Staff based this recommendation on numerous identified deficiencies. (Staff IB, X.). Staff did not, however, provide a comprehensive list of every possible defect in Millennium's case. Its failure to identify each and every deficiency in its briefs does not imply that Staff made a decision that Millennium has met any particular criteria.

Should the Commission accept the letter referenced by Millennium as evidence in this proceeding, then the Commission will see that Mr. Widbin states ***Begin Conf XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXX End Conf*** Millennium does not have a contract with either Verizon or Sprint and therefore has no direct contractual obligation to Millennium. Millennium has a contract with Reunion Wireless Services, LLC. (Millennium Ex. 1.0R, 32.) ***Begin Conf XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX End Conf*** Mr. Widbin's statement does not provide the support that Millennium asserts it does.

Millennium's assertion that Staff has determined that Millennium has proven its capability to function in emergency situations is incorrect and not supported by the facts. Staff election not to seek further discovery to remedy the deficiencies in Millennium's showing in this regard does not in any way imply that the Commission was incorrect to challenge Millennium's showing.

D. Reliance on Evidence Not Admitted Into the Record

Millennium argues "The Commission cannot adopt the Commission Order as its Order on Rehearing because many of the findings were based upon the Rebuttal Testimony of Staff witness Dr. James Zolnierek that was not admitted into the record, identified in the Commission Order as Staff Ex. 2.0." (Millennium IB ON REHEARING, 6.) The Commission's citations to Staff Ex. 2.0 are unnecessary. Evidence supporting the Commission's determinations is in the record of this proceeding.

First, in finding that the record does not support a conclusion that Millennium has the technical capability to provide service in all portions of the identified service area, the Commission stated that a service area was not included in Millennium's contracts with its underlying service provider. (Order, 35.) In doing so the Commission referenced both Staff Ex. 2.0 and Staff Ex. JZ 1.04b (conf). Id. The Commission need only revise its Order to reference Staff Group Ex. 3.0, Second Response JZ 1 04b and Millennium Group Ex. 3.17. These exhibits, in the record, contain Millennium's contract with Reunion, which, as the Commission correctly notes, does not specify the service area that the Millennium is able to serve through use of the Reunion wholesale services. The Commission's determinations therefore are supported by the record evidence and reference to Staff Ex. 2.0 is unnecessary.

Second, in finding that the record does not support a conclusion that Millennium can remain functional in emergency situations, the Commission referred to Staff Ex. 2.0. (Order, 29.) The evidence that Staff relied on and that is the basis for the Commission findings is again the contract included in Staff Group Ex. 3.0, Second Response JZ 1 04b and Millennium Group Ex. 3.17. As the Commission correctly found, this contract does not support a conclusion that Millennium can remain functional in emergency situations. Again, reference to Staff Ex. 2.0 is unnecessary.

Third, in finding that evidence relating to Applicant's wireline Lifeline reporting is indicative of future (in)ability to provide adequate service, the Commission refers to Staff Ex. 2.0. Again, the evidence relied upon in Staff Ex. 2.0 is Millennium's wholesale contract with Reunion Wireless, LLC, which is found in the record in Staff Group Ex. 3.0, Second Response JZ 1 04b and Millennium Group Ex. 3.17. This contract *** Begin Conf XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. End Conf*** These are facts in the record and reference to Staff Ex. 2.0 is unnecessary.

Fourth, the Commission referred to Staff Ex. 2.0 when noting that it has designated ten (10) wireless ETCs and seven (7) of those 10 have authority to operate in all of the Applicants identified service. These facts are a matter of the public record and included in the Commission's own Orders designated the following carriers as ETCs: Illinois Valley Cellular RSA 2-I and RSA 2-II (Docket Nos. 04-0454/0455/0456), USCOC of Central Illinois, LLC (Docket No. 04-0653), Cellular Properties, Inc. (Docket No. 07-0154), Nexus Communications, Inc. (Docket No. 09-0067), TracFone Wireless, Inc. (Docket No. 09-0213), PlatinumTel Communications, LLC (Docket No. 09-0269), YourTel America, Inc. (Docket No. 09-0605), Cricket Communications, Inc. (Docket

Nos. 10-0452 and 10-0453), Telrite Corporation (Docket No. 10-0512), and i-wireless (Docket No. 11-0073). Therefore, reference to Staff Ex. 2.0 is unnecessary.

Finally, the Commission, referred to Staff Ex. 2.0 with respect to Millennium's low retention rate relative to all other ETCs in Illinois. (Order, 42.) As noted in the Commission Order, this fact is also referenced in the record in Staff Ex. 1.0. (Id.) While the Commission references information on other ETCs that was included in Staff Ex. 2.0 in order to demonstrate the magnitude of the differences between Millennium's retention rate and the other ETCs, this detail is unnecessary with respect to the Commission's finding, which is specific to Millennium (i.e., "[t]he high turnover rate of Applicant's wireline Lifeline customers is dramatic, and is inconsistent with the notion of the Applicant providing customers a dependable service"). (Id.) Millennium's deficiency in this respect is clear, and it is not incumbent upon Staff or the Commission to elicit how extensive this transgression is. Reference to Staff Ex. 2.0 is unnecessary.

As explained above, the Commission's references to Staff Ex. 2.0 are unnecessary as the evidence within Staff Ex. 2.0 referenced by the Commission is, with immaterial exceptions, either contained elsewhere in the record or contained in the Commission's own publicly available Orders. Correcting the above referenced citations and removing immaterial turnover rate details for ETC's other than Millennium does not alter the foundation of the Commission's determinations. Millennium's accusation that the Commission reference to Staff Ex. 2.0 "raises serious questions about the integrity of the Commission's deliberations in this proceeding" is needlessly inflammatory. Such ballyhoo does not and cannot change the fact that the evidence in this proceeding dictates that the Commission should not designated Millennium as a wireless ETC.

IV. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order on rehearing in this proceeding deny Millennium's Petition for ETC status.

Respectfully submitted,

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